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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of the Petition)
of the Inmate Calling) RM-8181
Services Providers Task Force)
for Declaratory Ruling)

COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("USWC"), through counsel, hereby files these comments in response to a petition for declaratory ruling filed February 2, 1993, by the Inmate Calling Services Providers Task Force ("Task Force") ("Petition").¹

In its Petition, the Task Force requests that the Commission declare that "inmate-only" telephones provided by telephone companies as part of their regulated common carrier service be declared preemptively deregulated on the basis that they are properly classified as "customer premises equipment" ("CPE") pursuant to the Federal Communications Commission's ("FCC" or "Commission") Computer Rules.² The Task Force also requests that certain features of such inmate-only phone systems be declared to be enhanced services under the same Computer Rules.

USWC offers inmate-only service in accordance with the description set forth in the Petition -- that is to say, pursuant to state regulatory authority. Inmate-only service is considered to fall within the rubric of "pay telephones" set forth by the

¹See Public Notice, DA 93-137, rel. Feb. 9, 1993.

²See 47 C.F.R. § 64.702.

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Commission in its Tonka Tools decision.³ The FCC's Computer Rules apply only to the extent that enhanced services are offered -- either via central office or premises-located equipment. The telephone apparatus on the customer premises is considered part of USWC's regulated carrier offering of exchange service.⁴ Computers and other equipment used to provide the unique type of services essential to an inmate-only system are evaluated based on: 1) whether the functions constitute enhanced services;⁵ and (2) state regulatory concerns and desires.

In this context, we submit that a declaratory ruling such as is suggested by the Task Force is not appropriate.⁶ Contrary to the Task Force's basic premise, the FCC has squarely ruled that all exchange carrier coin phones are properly classified as providing exchange services,⁷ and the Task Force really seeks a rule change, not a clarification. Pay phones, including inmate-only phones, are offered on a common carrier basis subject to state

³Tonka Tools, Inc., Memorandum Opinion and Order, FCC 85-269, rel. May 22, 1985, at ¶¶ 11-12.

⁴Id. at ¶ 11.

⁵Voice storage and retrieval constitute enhanced services and are offered as such by USWC.

⁶We do not dispute the Commission's authority to resolve ambiguities via the declaratory ruling route. Orth-O-Vision, Inc., 82 F.C.C.2d 178, 184-85 ¶ 15 (1980), aff'd sub nom. N.Y. State Com'n on Cable T.V. v. F.C.C., 669 F.2d 58 (2d Cir. 1982). However, the Commission has long recognized that significant policy direction changes are not best treated via declaratory proceedings. Cellular Telephone Company, 3 FCC Rcd. 6274, 6275 ¶¶ 9-12 (1988).

⁷The primary contention of the Task Force, that inmate populations are not highly mobile (Petition at 12-14), while certainly beyond cavil, is totally irrelevant.

laws concerning the provision of exchange service. Thus, while the inmate phone market is, as is pointed out by the Task Force, highly competitive,⁸ the fact remains that local exchange carriers ("LEC") must comply with state rules in the provision of the entirety of their own inmate services. And this situation is hardly irrational. While it is true that inmate-only phones are generally, as the name implies, available only to inmates, it is likewise true that these phones are common phones for use of that limited public body (as opposed to phones dedicated to individual people, such as the phones in offices of the prison staff, which are classified as CPE). Thus, the considerations which prompted the pay telephone exclusion from the CPE definition are equally valid in the case of inmate-only phones.⁹

In fact, contrary to the implication in the Petition, specialized pay phone service is becoming more and more common in areas outside of prisons. While inmate-only phones do have a number of special features dealing with call and caller control, these types of features have utility in other settings, such as schools, hospitals, etc. In each of these situations, the overall pay phone service is offered as exchange service subject to state regulation.

⁸Id. at 2.

⁹A more generic filing, addressing all pay telephones, was filed July 18, 1988, by the Public Telephone Council. That filing, styled as an "Expedited Petition for Declaratory Ruling," remains pending at the FCC. See Public Notice, 3 FCC Rcd. 4779 (1988).

4

In this context, we submit that any effort by the FCC to reenter the intrastate pay phone thicket at this time would be unwise. Inmate-only service is common carrier in nature, should a state so elect, even when provided by a competitive provider.¹⁰ There are not sufficient facts presented by the Task Force to warrant even considering changing this status.

Wherefore, we respectfully request that the Petition for Declaratory Ruling be denied.

Respectfully submitted,

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March 8, 1993

¹⁰Universal Payphone Corporation, Memorandum Opinion and Order,
FCC 85-222, rel. May 6, 1985, at ¶ 15.

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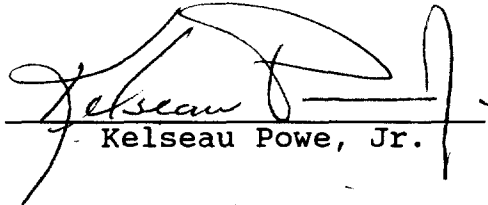
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CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify on this 8th day of March, 1993, that I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be hand delivered to the persons named on the attached service list.


Kelseau Powe, Jr.

***via U.S. First Class Mail**